

## SUBCHAPTER B—REGULATIONS UNDER TITLE II OF THE GOVERNMENT SECURITIES ACT OF 1986

### PART 450—CUSTODIAL HOLDINGS OF GOVERNMENT SECURITIES BY DEPOSITORY INSTITUTIONS

Sec.

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AUTHORITY: Sec. 201, Pub. L. 99-571, 100 Stat. 3222-23 (31 U.S.C. 3121, 9110); Sec. 101, Pub. L. 99-571, 100 Stat. 3208 (15 U.S.C. 78o-5(b)(1)(A), (b)(4), (b)(5)(B)).

SOURCE: 52 FR 27957, July 24, 1987, unless otherwise noted.

#### § 450.1 Scope of regulations; office responsible.

(a) This part applies to depository institutions that hold government securities as fiduciary, custodian, or otherwise for the account of a customer, and that are not government securities brokers or dealers, as defined in sections 3(a)(43) and 3(a)(44) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(43)-(44)). Depository institutions exempt under part 401 of this chapter from the requirements of Subchapter A of this chapter must comply with this part. Certain depository institutions that are government securities brokers or dealers must also comply with this part, as well as with additional requirements set forth in § 403.5.

(b) The regulations in this subchapter are promulgated by the Assistant Secretary (Domestic Finance) pursuant to a delegation of authority from the Secretary of the Treasury. The office responsible for the regulations is the Office of the Commissioner, Bureau of the Public Debt. Procedures for obtaining interpretations of the regulations are set forth at § 400.2.

[52 FR 27957, July 24, 1987, as amended at 53 FR 28987, Aug. 1, 1988]

#### § 450.2 Definitions.

For purposes of this subchapter:

(a) *Appropriate regulatory agency* has the meaning set out in section 3(a)(34)(G) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)(G)), except that the appropriate regulatory agency for—

(1) A Federal credit union as defined in 12 U.S.C. 1752(1) and an insured credit union as defined in 12 U.S.C. 1752(7) is the National Credit Union Administration; and

(2) Any depository institution for whom an appropriate regulatory agency is not explicitly specified by either section 3(a)(34)(G) or this paragraph, is the SEC;

(b) *Customer* includes, but is not limited to, the counterparty to a transaction pursuant to a repurchase agreement for whom the depository institution retains possession of the security sold subject to repurchase, but does not include a broker or dealer that is registered pursuant to section 15, 15B or 15C(a)(1)(A) of the Act (15 U.S.C. 78o, 78o-4, 78o-5(a)(1)(A)) or that has filed notice of its status as a government securities broker or dealer pursuant to section 15C(a)(1)(B) of the Act (15 U.S.C. 78o-5(a)(1)(B)) except as provided in § 450.4.

(c) *Depository institution* has the meaning stated in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A) (i)-(vi)) and also includes a foreign bank, an agency or branch of a foreign bank and a commercial lending company owned or controlled by a foreign bank (as such terms are defined in the International Banking Act of 1978, Pub. L. 95-369, 92 Stat. 607);

(d) *Fiduciary capacity* includes trustee, executor, administrator, registrar, transfer agent, guardian, assignee, receiver, managing agent, and any other similar capacity involving the sole or shared exercise of discretion by a depository institution having fiduciary powers that is supervised by a Federal or state financial institution regulatory agency; and

(e) *Government securities* means:

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If . . .	Then . . .
(1)(i) A depository institution is a government securities broker or dealer as defined in sections 3(a)(43) and 3(a)(44) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(43)–(44)).	“Government securities” means those obligations described in subparagraphs (A), (B), (C), or (E) of section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)(A)–(C), (E))
(ii) A depository institution is exempt under Part 401 of this chapter from the requirements of Subchapter A.	“Government securities” means those obligations described in subparagraphs (A), (B), (C), or (E) of section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)(A)–(C), (E))
(2) A depository institution is not a government securities broker or dealer as defined in sections 3(a)(43) and 3(a)(44) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(43)–(44)).	“Government securities” means those obligations described in subparagraphs (A), (B), or (C) of section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)(A)–(C))

[52 FR 27957, July 24, 1987, as amended at 55 FR 6604, Feb. 26, 1990; 66 FR 28655, May 24, 2001; 66 FR 29888, June 1, 2001]

**§ 450.3 Exemption for holdings subject to fiduciary standards.**

(a) The Secretary has determined that the rules and standards of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision governing the holding of government securities in a fiduciary capacity by depository institutions subject thereto are adequate. Accordingly, such depository institutions are exempt from this part with respect to their holdings of government securities in a fiduciary capacity and their holdings of government securities in a custodial capacity provided that:

(1) Such institution has adopted policies and procedures that would apply to such custodial holdings all the requirements imposed by its appropriate regulatory agency that are applicable to government securities held in a fiduciary capacity, and

(2) Such custodial holdings are subject to examination by the appropriate regulatory agency for compliance with such fiduciary requirements.

(b) The Secretary expects that each appropriate regulatory agency will notify the Department if it materially revises its rules and standards governing the holding of government securities in a fiduciary capacity.

[52 FR 27957, July 24, 1987, as amended at 70 FR 29446, May 23, 2005]

**§ 450.4 Custodial holdings of government securities.**

Depository institutions that are subject to this part shall observe the following requirements with respect to their holdings of government securities for customer accounts:

(a)(1) Except as otherwise provided in this section, a depository institution shall maintain possession or control of all government securities held for the account of customers by segregating such securities from the assets of the depository institution and keeping them free of any lien, charge or claim of any third party granted or created by such depository institution.

(2)(i) Where customer securities are maintained by a depository institution at another depository institution, including but not limited to a correspondent bank or a trust company (“custodian institution”), the depository institution shall be in compliance with paragraph (a)(1) of this section if:

(A) The depository institution notifies the custodian institution that such securities are customer securities;

(B) The custodian institution maintains such securities in an account that is designated for customers of the depository institution and that does not contain proprietary securities of the depository institution; and

(C) The depository institution instructs the custodian institution to maintain such securities free of any lien, charge, or claim of any kind in favor of such custodian institution or any persons claiming through it.

(ii) To the extent that a custodian institution holds securities that have been identified as customer securities by a depository institution in accordance with paragraph (a)(2)(i) of this section, the custodian institution shall treat such securities as customer securities separate from any other securities held for the account of the depository institution.

(3)(i) Where securities that a depository institution is required, pursuant to this part 450, to keep free of all liens, charges, or other claims ("customer securities") are maintained by a depository institution at a Federal Reserve Bank, the depository institution shall be in compliance with paragraph (a)(1) of this section if any lien, charge or other claim of such Federal Reserve Bank or any person claiming through it against securities of the depository institution expressly excludes customer securities.

(ii) Notwithstanding paragraph (a)(3)(i) of this section, a depository institution described in that paragraph shall be in compliance with paragraph (a)(1) of this section if a Federal Reserve Bank retains a lien on securities received during the day that are subsequently determined to be customer securities, *provided that*,

(A) On that day, the depository institution:

(1) Because of extraordinary circumstances, at the end of that day either requests a discount window advance or is unable to eliminate an overdraft with its Federal Reserve Bank and the Federal Reserve Bank extends credit to the depository institution in order to assure the safety and soundness or liquidity of the depository institution; and

(2) After reasonable efforts, is unable to provide the Federal Reserve Bank with an adequate security interest in other collateral that is clearly identifiable as pledgeable by the depository institution sufficient to fully collateralize such extension of credit; and

(B) The depository institution diligently pursues with the Federal Reserve Bank the substitution of other collateral for securities determined to be customer securities; and

(C) The Federal Reserve Bank agrees that to the extent the lien extends to collateral of a value greater than the outstanding balance on the loan, customer securities will be the first collateral released from the lien.

(4)(i) To the extent that a depository institution holds securities that have been identified to such depository institution as customer securities by a government securities broker or dealer, or that the government securities broker or dealer has instructed the depository institution to place in a segregated account, in accordance with part 403 of subchapter A of this chapter, the depository institution shall treat such securities as customer securities separate from any other securities held for the account of the government securities broker or dealer and shall comply with all of the provisions of this section with respect to such customer securities, except as provided in paragraph (a)(4)(ii) of this section.

(ii) A clearing bank that provides clearing services for a government securities broker or dealer and that maintains a segregated account as described in § 403.4 of this chapter shall not be required to transfer securities to such account upon the instruction of the broker or dealer for whom such account is maintained if the clearing bank determines that such securities continue to be required as collateral for an extension of clearing credit to such dealer. Whenever a clearing bank does not segregate securities as of the close of business upon the instruction of such broker or dealer, it shall send a notification to the appropriate regulatory agency of the broker or dealer for whom such account is maintained. Such securities shall thereafter be segregated pursuant to the instruction of the broker or dealer as soon as they are no longer required by the clearing bank as collateral for the extension of clearing credit.

(5) A depository institution that is subject to Part 403 is not required to maintain possession or control of margin securities as that term is defined in § 403.5(f)(1).

(6) Notwithstanding the requirement of paragraph (a)(1) to maintain possession or control of customer securities, a depository institution may lend such

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securities to a third party pursuant to the written agreement of the customer, if such loan of securities is carried out in full compliance with supervisory guidelines of its appropriate regulatory agency that expressly govern securities lending practices.

(b)(1) Except as otherwise provided in paragraph (b)(2) of this section, a depository institution shall issue a confirmation or a safekeeping receipt for each security held for a customer in accordance with this section with the exception of securities that are the subject of repurchase transactions which are subject to the requirements of § 403.5(d) of this chapter. The confirmation or safekeeping receipt shall identify the issuer, maturity date, par amount and coupon rate of the security being confirmed. The confirmation may be supplied to the customer in any manner that complies with applicable Federal banking regulations.

(2) A depository institution shall not be required to send the confirmation or safekeeping receipt required by paragraph (b)(1) of this section to a customer that is a non-U.S. citizen residing outside the United States or a foreign corporation, partnership, or trust, if such customer expressly waives in writing the right to receive such confirmation or safekeeping receipt.

(c) Records of government securities held for customers shall be maintained and shall be kept separate and distinct from other records of the depository institution. Such records shall:

(1) Provide a system for identifying each customer, and each government security (or the amount of each issue of a government security issued in book-entry form) held for the customer;

(2) Describe the customer's interest in the government security;

(3) Indicate all receipts and deliveries of government securities and all receipts and disbursements of cash by the depository institution in connection with such securities;

(4) Include a copy of the safekeeping receipt or a confirmation issued for each government security held; and

(5) Provide an adequate basis for audit of such information.

(d) Counts of government securities held for customers in both definitive

and book-entry form shall be conducted at least annually and such counts shall be reconciled with customer account records.

(1) Counts of book-entry securities and of definitive securities held outside the possession of the depository institution shall be made by reconciliation of the records of the depository institution with those of any depository, depository institution, or Federal Reserve Bank on whose books the depository institution has securities accounts.

(2) The depository institution conducting the count shall also verify any such securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to the depository institution's control or direction that are not in its physical possession, where the securities have been in such status for longer than thirty days.

(3) The dates and results of such counts and reconciliations shall be documented with differences noted in a security count difference account not later than seven business days after the date of each required count and verification as provided in this paragraph (d).

(e) For purposes of this section, a depository institution shall treat a government securities broker or dealer as a customer with respect to securities maintained by such government securities broker or dealer in a Segregated Account as defined in § 403.4(f)(1) of this chapter and with respect to securities otherwise identified to the depository institution as customer securities for purposes of maintaining possession or control of such securities as required by part 403 of this chapter. The record-keeping requirements of paragraph (c) of this section require the depository institution to treat such securities as customer securities separate from any other securities held for the account of the government securities broker or dealer, but do not require the depository institution to keep records identifying individual customers of the government securities broker or dealer.

(f) The records required by paragraphs (c) and (d)(3) of this section

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shall be preserved for not less than six years, the first two years in an easily accessible place.

(Approved by the Office of Management and Budget under control number 1535–0089)

[52 FR 27957, July 24, 1987, as amended at 60 FR 11026, Mar. 1, 1995]

**§ 450.5 Effective date.**

This part shall be effective October 31, 1987.